

EVERYTHING YOU NEED TO KNOW ABOUT

EV Charging Systems

IN COMMUNITY ASSOCIATIONS



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In 2018, the world saw a **64% increase** in the use of electric vehicles (“EVs”), rising from 3.4 million to 5.6 million . Today 1.2 billion EVs are in operation. Given the growing number of EVs used today, boards and managers need to understand the law on EVs and how it applies to community associations.

SUMMARY OF LAW

ON MAY 3, 2013, SB 13-126 (“EV BILL”) WAS SIGNED INTO LAW AND ADDED TO CCIOA AS C.R.S. 38-33.3-106.8. IN SUMMARY, THE EV BILL PROHIBITS A RESIDENTIAL (NOT COMMERCIAL) ASSOCIATION FROM DENYING AN OWNER:

1. The right to use or install a Level 1 or Level 2 Electric Vehicle Charging System (“EV System”);
2. At the Owner’s expense;
3. In the following locations:
 - Within the Unit boundaries, or
 - In a Limited Common Element (“LCE”) parking space, carport or garage owned by, or otherwise assigned to, the Owner in the declaration or other recorded document if:
 - the EV System otherwise complies with the declaration, bylaws, rules and regulations, and
 - the Owner agrees in writing to certain conditions relating to the design, installation, expense and insurance of the EV System;
4. Subject to additional regulations related to safety, registration of the EV System, and aesthetics;

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1 *Can Associations Ban the Installation of EV Systems?*

YES, from any General Common Element (“GCE”). No, on other locations discussed below, assuming the Owner complies with certain conditions.

2 *Where must an Association Allow EV Systems to be Installed?*

WITHIN THE UNIT/LOT BOUNDARIES. For most single family home communities, the Lots usually include the garage and driveway. Some attached home communities (townhomes, row homes, etc.) might also have boundaries that extend to the garage and driveway. With condos, however, parking spaces are usually outside the Unit boundaries.

IN LCE GARAGES, CARPORTS, PARKING SPACES OWNED BY, OR ASSIGNED TO, THE OWNER IN THE DECLARATION OR OTHER RECORDED DOCUMENT. Look to the declaration and/or plat or condo map to determine whether a parking space is an LCE or assigned to a particular Unit. A deed or other recorded document may also include such designation.

3 *Can an Owner Install an EV System on the General Common Elements?*

NO, not without the association’s approval.

4 *Can the Association Require the Owner to Comply with Certain Conditions Before Approving an EV System?*

YES. The association may:

- Adopt bona fide safety requirements, which the Owner must follow;
- Require the Owner to register the EV System with the association within 30 days after installation;
- Adopt reasonable aesthetic provisions governing the dimensions, placement, or external appearance of the EV System.

In addition, the Owner must agree in writing to:

- Comply with the association’s design specifications for the EV System, if any;
- Use only a duly licensed and registered electrical contractor familiar with the installation and core requirements of EV Systems;
- Pay for installation, including costs to restore Common Elements disturbed in the process; and
- Comply with the insurance requirements set forth in the EV Bill.

5 *Who Pays for Installing the EV System?*

THE OWNER. If the Owner damages any LCE, GCE, or any adjacent units, garage stalls, carports, or parking spaces when installing the EV System, the Owner is responsible for the cost of damage.

The Owner also pays for electricity. If the association provides the electricity, then it may either:

- Require reimbursement for the actual cost of electricity used, or
- Charge a reasonable fee for access to the electricity.

If reimbursing for actual cost of electricity and if the Unit is not separately metered, then a separate meter or some other device may be installed, at the Owner’s cost, to read the electricity used by the EV System.

If charging a reasonable fee for access, associations should consult their electricity providers for what’s considered reasonable. If the EV System is part of a network for which a network fee is charged, reimbursement may include the amount of the network fee.

6 *Who Pays for Maintaining the EV System?*

THE OWNER. This includes costs for damage to the EV System, and any other LCE, GCE, or adjacent units, garage stalls, carports, or parking spaces arising or resulting from the maintenance, repair or replacement of the EV System.

The Owner must also remove the EV System “if reasonably necessary or convenient for the repair, maintenance, or replacement of the Limited Common Elements or General Common Elements of the Common Interest Community.”

7 Who Insures the EV System?

THE OWNER. If an EV System is installed on an LCE, then unless otherwise specified in a written contract or the declaration, bylaws, or rules and regulations, the Owner:

- Must maintain an insurance policy covering the Owner's obligations under Subsection 5 of the EV Bill (this section covers maintenance, repair, removal, and replacement of the EV System, and any related damage);
- Is subject to the certificate of insurance obligations stated in Subsection 4(b)(IV) of the EV Bill (see below for clarification), and
- Must name the association as an additional insured under the policy.

WITH RESPECT TO CERTIFICATES OF INSURANCE, SUBSECTION 4(B)(IV) REQUIRES:

- The Owner to provide certificate of insurance naming the association as an additional insured on the Owner's policy for any claim related to installation, maintenance, or use of the EV System, within 14 days after receiving the association's consent, or
- If the EV System is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the EV System, within 14 days after receiving the association's invoice for the amount attributable to the EV System.

8 Are there any dangers to installing EV Systems?

MAYBE. But we're not experts. The Board needs to speak with experts about limits, safety issues, etc., so as to craft the appropriate safety regulations for its community. Keep in mind that the association is able to adopt bona fide safety requirements consistent with an applicable building code or recognized safety standard. This may require a limitation of the number of EV Systems that may be installed in any given building. Also, regardless of the insurance obligations required for an Owner, the association should be speaking with its own insurance carrier to determine adequate coverage under the association's policy.

9 Must an Owner Remove the EV System if Selling the Unit?

NO. Upon sale if the EV System is removable, the Owner may either remove it or sell it to the buyer of the Unit or to the association. Neither the buyer or the association must purchase the System.

However, if the EV System is not removed, then each successive Owner with exclusive rights to the LCE space in which the EV System is installed "shall assume responsibility for the repair, maintenance, removal and replacement of the charging EV System until the EV System has been removed."

10 Must the Association Allow Tenants to Install EV Systems?

COLORADO LAW DOES NOT REQUIRE ASSOCIATIONS TO ALLOW TENANTS OR NON-OWNER RESIDENTS TO INSTALL EV SYSTEMS. However, the EV Bill imposes restrictions on landlords that are similar to those imposed on associations. So, any tenants who wish to install an EV System will have to make the request through the landlord Owner, who can then make the request to the association.

11 Readiness Checklist

Given the above, what should associations be doing to get ready for more EVs?

1. Adopt an EV Charging System Policy, which discusses locations for installation, conditions for installation, and other requirements as set forth above;
2. If desirable, adopt design and aesthetic guidelines for the EV System;
3. If the EV System is to be installed on an LCE, adopt a standard agreement for Owners to sign, as discussed above;
4. Speak to experts, including the association's insurance carrier, to address safety issues and adequate coverage; and
5. Consider whether the association should install an EV System on the GCE. ⬆